

### **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed August 7, 2007 (Paper No. 20070801). Upon entry of this response, claims 1-3, 7-9, 13-17, 20-22, 26-27, 30-31, 33-36, 40-53, and 55-59 are pending in the application. In this response, claims 1, 15-16, 27, 33, and 42 have been amended, and claim 54 has been cancelled. Applicant respectfully requests that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

#### **1. Examiner Interview Summary**

An interview was conducted on August 30, 2007. Participants were Applicant's representative Karen G. Hazzah, and Examiner Kalyan K. Deshpande. Applicant's representative explained some details of a mathematical algorithm disclosed in the instant application, and participants discussed differences between this algorithm and the teachings of the *Stuart* reference. The Examiner suggested that Applicant amend the claims to express aspects of this algorithm. Applicant wishes to thank the Examiner for his time.

#### **2. Response to Examiner's Note**

The Office Action (p. 2) indicates that in the last response, claims have been presented with incorrect claim status identifier. Specifically, the Office Action notes that claim 16 was identified as "currently amended" but no amendments were made, and claim 15 was identified as "previously presented" but amendments were made. Applicant apologizes for this oversight, and submits that all claims in this response have correct status identifiers.

#### **3. Rejection of Claims 1-3, 7-9, 14-17, 20-22, 27, 30-31, 33-34, 36, 41-42, and 50-59 under 35 U.S.C. §103**

Claims 1-3, 7-9, 14-17, 20-22, 27, 30-31, 33-34, 36, 41-42, and 50-59 have been rejected under §103(a) as allegedly obvious over *Stuart et al.* (U.S. 6,639,982) in view of

*O'Brien* (U.S. 6,587,831). Applicant respectfully traverses this rejection. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/features/steps of the claim at issue. See, e.g., *In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claims 1 and 16

Applicant has amended claim 1 to recite the feature “calculating an effect of adding the another agent **as if the another agent is the only agent that will be added**; and iteratively adding additional agents from the at least one profile to the proposed schedule and iteratively calculating effects of adding the additional agents while considering each additional agent **as if that additional agent is the only agent that will be added**” (emphasis added). Applicant has amended claim 16 to recite the feature “calculating an effect of adding the another employee **as if the another employee is the only employee that will be added**; and iteratively adding additional employees from the at least one profile to the proposed schedule and iteratively calculating effects of adding the additional employees while considering each additional employee **as if that additional employee is the only employee that will be added**” (emphasis added). Applicant respectfully submits that amended claims 1 and 16 are allowable for at least the reason that the proposed combination of *Stuart et al.* in view of *O'Brien* does not disclose, teach, or suggest at least these features.

*Stuart et al.* appears to teach general linear optimization techniques. As described in the Office Action, the “linear optimization can be run from a baseline (of 0 agents) up to an optimal number. This accounts for the effects of adding a first agent and each subsequent agent.” (Office Action, p. 5, lines 14-16.) In contrast, claim 1 recites “considering each additional agent as if that additional agent is the only agent that will be added”, and claim 16 recites “considering

each additional employee as if that additional employee is the only employee that will be added”.

The technique recited in claims 1 and 16 is not linear optimization, and is counter-intuitive to conventional staffing techniques. The technique recited in claims 1 and 16 makes a false assumption (“as if the another agent is the only agent/employee that will be added”), calculates the effects of this false assumption, then violates the false assumption by in fact adding another agent/employee. Although counter-intuitive because the assumption is in fact false, this technique has been found to produce optimal staffing plans when used over long-range periods.

The Abstract of *O'Brien* discloses “a method for centrally creating a schedule for a group of company employees who may be geographically dispersed...The scheduling system assigns the employees to shifts while accommodating numerous factors including staffing requirements, employee preferences, and optimal settings based on forecasting.” *O'Brien* also makes the statement that the “schedule period can be one week, one month, or some other period”. (Col. 4, lines 40-45.) Applicant will assume, for the sake of argument, that the scheduler in *O'Brien* is equivalent to one that produces “an agent staffing plan for a long-range period that is more than a month” as recited in the preambles of claims 1 and 16. Even so, *O'Brien* also fails to teach, suggest or disclose the above-described “as if the another agent is the only agent that will be added” feature recited in amended claim 1 and the “considering each additional employee as if that additional employee is the only employee that will be added” feature recited in amended claim 16.

Accordingly, the proposed combination of *Stuart et al.* in view of *O'Brien* does not teach at least the above-described feature recited in amended claims 1 and 16. Therefore, a *prima facie* case establishing an obviousness rejection has not been made under the proposed combination of *Stuart et al.* in view of *O'Brien*, and the rejection should be withdrawn.

b. Claim 30

The Office Action (p. 14) states that “[c]laims 30-31, 33-34, and 36-39 further recite limitations already addressed by 1-3, 7, 9-10, 16-17, 19-20, 22-23, 24-25, 27-29; therefore the same rejections apply to these claims.” Applicant respectfully submits that independent claim 30 has different limitations than independent claims 1 and 16, and that the rejection of claim 30 is improper because it does not consider these rejections. Specifically, Applicant respectfully submits that claim 30 is allowable for at least the reason that the proposed combination of *Stuart et al.* in view of *O'Brien* does not disclose, teach, or suggest at least the feature “iteratively calculating effects of adding the additional employees while considering the **addition of each additional employee to be independent of adding any other employees**” (emphasis added).

*Stuart et al.* appears to teach general linear optimization techniques. As described in the Office Action, the “linear optimization can be run from a baseline (of 0 agents) up to an optimal number. This accounts for the effects of adding a first agent and each subsequent agent.” (Office Action, p. 5, lines 14-16.) In contrast, claim 30 recites “iteratively calculating effects of adding the additional employees while considering the addition of each additional employee to be independent of adding any other employees”.

The technique recited in claim 30 is not linear optimization, and is counter-intuitive to staffing techniques. The technique recited in claim 30 makes a false assumption (“considering the addition of each additional employee to be independent of adding any other employees”), calculates the effects of this false assumption, then violates the false assumption by in fact adding another employee. Although counter-intuitive because the assumption is in fact false, this technique has been found to result in optimal staffing plans when used over long-range periods.

The Abstract of *O'Brien* discloses “a method for centrally creating a schedule for a group of company employees who may be geographically dispersed...The scheduling system assigns

the employees to shifts while accommodating numerous factors including staffing requirements, employee preferences, and optimal settings based on forecasting.” *O'Brien* also makes the statement that the “schedule period can be one week, one month, or some other period”. (Col. 4, lines 40-45.) Applicant will assume, for the sake of argument, that the scheduler in *O'Brien* is equivalent to one that produces “an agent staffing plan for a long-range period that is more than a month” as recited in the preamble of claim 30. Even so, *O'Brien* also fails to teach, suggest, or disclose the above-described “as if the another agent is the only agent that will be added” feature recited in amended claim 30.

Accordingly, the proposed combination of *Stuart et al.* in view of *O'Brien* does not teach at least the above-described feature recited in claim 30. Therefore, a *prima facie* case establishing an obviousness rejection has not been made under the proposed combination of *Stuart et al.* in view of *O'Brien*, and the rejection should be withdrawn.

c. Claims 2-3, 7-9, 14-15, 17, 20-22, 27, 31, 33-34, 36, 41-42, 50-53, and 55-59

Since independent claims 1, 16, and 30 are allowable, Applicant respectfully submits that claims 2-3, 7-9, 14-15, 17, 20-22, 27, 31, 33-34, 36, 41-42, 50-53, and 55-59 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 2-3, 7-9, 14-15, 17, 20-22, 27, 31, 33-34, 36, 41-42, 50-53, and 55-59 be withdrawn.

4. Rejection of Claims 13, 26, 35, and 40 under 35 U.S.C. §103

Claims 13, 26, 35, and 40 have been rejected under §103(a) as allegedly obvious over *Stuart et al.* (U.S. 6,639,982) in view of *O'Brien* (U.S. 6,587,831), and further in view of *Kintner, et al.* (U.S. 6,732,079). Applicant respectfully traverses this rejection. As set forth above, Applicant submits that independent claims 1, 16, and 30 are allowable over the proposed combination of *Stuart et al.* in view of *O'Brien*. Applicant further submits that *Kintner* fails to

remedy the deficiencies of *Stuart et al.* and *O'Brien* described above. Since independent claims 1, 16, and 30 are allowable, Applicant respectfully submits that claims 13, 26, 35, and 40 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 13, 26, 35, and 40 be withdrawn.

5. Rejection of Claims 43-49 under 35 U.S.C. §103

Claims 43-49 have been rejected under §103(a) as allegedly obvious over *Stuart et al.* (U.S. 6,639,982) in view of *O'Brien* (U.S. 6,587,831), and further in view of *Castonguay, et al.* (U.S. 5,911,134). Applicant respectfully traverses this rejection. As set forth above, Applicant submits that independent claims 1, 16, and 30 are allowable over the proposed combination of *Stuart et al.* in view of *O'Brien*. Applicant further submits that *Castonguay, et al.* fails to remedy the deficiencies of *Stuart et al.* and *O'Brien* described above. Since independent claim 1 is allowable, Applicant respectfully submits that claims 43-49 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 43-49 be withdrawn.

6. Assertions that Certain Features Are Well-Known

The Office Action includes the following assertions that features are “well-known”: (p. 11, rejecting claims 8) “It is old and well-known in the art to hire agents into a profile.”; (p. 13, rejecting claim 14) “It is old and well-known in the art to use multiple types of media and have agents with skills in multiple types of media.”; (p. 23, rejecting claim 43) “It is old and well-known in the art to initialize an agent profile.”

Applicant respectfully submits that in the context of the claim language, such an assertion that these features are “well-known” is improper, given the added complexity associated with such features included in independent claims 1, 16, and 30, and the balance of the claim features found in the dependent rejected claims referred to above. Accordingly, Applicant traverses the assertion.

**CONCLUSION**

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-3, 7-9, 13-17, 20-22, 26-27, 30-31, 33-36, 40-53, and 55-59 be allowed to issue. Any statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

By: /Karen G. Hazzah/

Karen G. Hazzah,  
Reg. No. 48,472

**THOMAS, KAYDEN, HORSTEMEYER  
& RISLEY, L.L.P.**

100 Galleria Parkway, NW  
Suite 1750  
Atlanta, Georgia 30339-5948  
Tel: (770) 933-9500  
Fax: (770) 951-0933